IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO.4648 of 2004 AND WRIT APPEAL Nos.173, 248,276, 382, 383, 385, 538 of 2003 and 817 of 2002

WRIT PETITION NO : 4648 of 2004

Between:
Dr. C. Chengamma W/o. Sri P. Ramalingaswamy
Teaching Assistant, (Zoology), Sri Venkateswara University Tirupathi.

..... PETITIONER

AND

1 The Government of A.P. Rep. by its Secretary Dept. of Higher Education
Secretariat, Hyderabad.
2 Sri Venkateswara University Rep. by its Registrar, Tirupathi.
3 The University Grants Commission Rep. by its Secretary Bhadurshah,
Zaloorman New Delhi.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or direction more particularly in the nature of Writ of Mandamus declaring the acts of respondents in not filling up of the back log vacancies with the eligible physically handicapped persons under special recruitment drive G.O.Ms.No.9 (WD, CW*DW(DW) dept. dt. 1-11-2002 and extended G.O.Ms.No.38 Women Development Child

Welfare & Disabled welfare (DW) Dept., dt. 1-11-2003 as illegal, arbitrary high handed and cannot be justified in the eye of law and consequently direct the respondents to consider the case of the petitioner for recruitment or regularisation as Asst. professor/ Associate professor or any other suitable post under special recruitment drive or considering the length of the service, qualification and experience of the petitioner as teaching Asst. in the department of Zoology in the second respondent university with all consequential benefits, in the interest of Justice.

Counsel for the Petitioner: MR.CH.SRINIVAS

For the Respondent No.1: GP FOR HIGHER EDUCATION

Standing Counsel for Respondent No.2: Mr.P.Sreeramulu Naidu.

WRIT APPEAL NO : 173 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 23.11.2001 in WP.NO. 10883 OF 2001 on the file of the High Court.)

Between

D.Harje Naik, s/o. Henda Naik,
Unemployee, R/o.Reddapalli Thanda,
Puttaparthi Mandal, Anantapur District.

..... APPELLANT

AND

1. The Government of A.P. represented by its Principal Secretary, Higher Education, Secretariat, Hyderabad.
2. The Chairman, Executive Council, S.V.University, Tirupati, Chittoor District.
3. The Chairman, Selection Committee, S.V.University, Tirupati.
4. The Registrar, S.V. University, Tirupathi, Chittoor District.

.....RESPONDENTS

For the Appellant:MR.V.JAGAPATHI

For the Respondent No.1: GP FOR HIGHER EDUCATION

Standing Counsel for Respondent Nos.2 to 4: Mr.P.Sreeramulu Naidu.

WRIT APPEAL NO : 248 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 23.11.2001 in WP NO : 3156 OF 2001 on the file of the High Court.)

Between:

1. M.Venkatesh, s/o. Ranganatham.
2. Dr.T.V.Narasaiah, S/o. Srinivasulu.
3. K.Rajasekar, S/o. K.Seetharam.
4. Dr.B.Nirmala Devi, W/o. Hari Babu.
5. Dr.M.Muralikrishna, S/o. M.Chengaiah.
6. T.Madhu, S/o. Timmanna.

All the appellants are unemployees and residing at Tirupati, Chittoor District.

..... APPELLANTS

AND

1. The Government of A.P. rep. By its Principal Secretary, Higher Education, Secretariat, Hyderabad.
2. The Chairman, Executive Council, S.V. University, Tirupati, Chittoor District.
3. The Chairman, Selection Committee, S.V. University, Tirupati.
4. The Registrar, S.V. University, Tirupati, Chittoor District.

.....RESPONDENTS

For the Appellant:MR.V.JAGAPATHI

For the Respondent No.1: GP FOR HIGHER EDUCATION

Standing Counsel for Respondent Nos.2 to 4: Mr.P.Sreeramulu Naidu.

WRIT APPEAL NO : 276 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 23.11.2001 in WP NO : 6725 OF 2001 on the file of the High Court.)

Between:

Dr.G.Choodamani, W/o. Karunakar, Unemployee,
R/o.Neeharika Apartments, Gayathri Nagar,
Tirupati, Chittoor District.

..... APPELLANT

AND

1. The Government of A.P. rep. By its Principal Secretary,
   Higher Education, Secretariat, Hyderabad.
2. The Chairman, Executive Council, S.V. University,
   Tirupati, Chittoor District.
3. The Chairman, Selection Committee,
   S.V. University, Tirupati.
4. The Registrar, S.V. University, Tirupati,
   Chittoor District.

.....RESPONDENT

For the Appellant:MR.V.JAGAPATHI

For the Respondent No.1: GP FOR HIGHER EDUCATION

Standing Counsel for Respondent Nos.2 to 4: Mr.P.Sreeramulu Naidu.

WRIT APPEAL NO : 382 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 23.11.2001 in WP NO : 4667 OF 2001 on the file of the High Court.)

Between:
Dr.S.Janardana Reddy, S/o.S.Appi Reddy,
4-3-786 A/3, Ground Floor, KSR Building,
Girupuram, Tirupati-517507. ……..APPELLANT

AND

1. The Government of A.P. rep. By its Principal Secretary,
   Higher Education, Secretariat, Hyderabad.
2. The Chairman, Executive Council, S.V. University,
   Tirupati, Chittoor District.
3. The Chairman, Selection Committee,
   S.V. University, Tirupati.
4. The Registrar, S.V. University, Tirupati,
   Chittoor District.

.....RESPONDENTS

For the Appellant:M/SC.KODANDA RAM

For the Respondent No.1: GP FOR HIGHER EDUCATION

Standing Counsel for Respondent Nos.2 to 4: Mr.P.Sreeramulu Naidu.

WRIT APPEAL NO : 383 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 23.11.2001 in WP NO : 5537 OF 2001 on the file of the High Court.)

Between:

1. Dr.V.Nagaraja Naidu, S/o.V.Chinnaswamy, 201258/A, II Floor, Officers Lane, Kongareddypally, Chittoor-517001.
2. Dr.G.Shankaranna, s/o.G.C.Venkataramanappa, 10-44, Upstairs, Maruthinagar, Tirupati-517502.

..... APPELLANTS

AND

1. The Government of A.P. rep. By its Principal Secretary, Higher Education, Secretariat, Hyderabad.
2. The Chairman, Executive Council, S.V. University, Tirupati, Chittoor District.
3. The Chairman, Selection Committee, S.V. University, Tirupati.
4. The Registrar, S.V. University, Tirupati, Chittoor District.

.....RESPONDENTS

Counsel for the Appellants: Sri C.KODANDA RAM

For the Respondent No.1: GP FOR HIGHER EDUCATION

Standing Counsel for Respondent Nos.2 to 4: Mr.P.Sreeramulu Naidu.

WRIT APPEAL NO : 385 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 23.11.2001 in WP NO : 5614 OF 2001 on the file of the High Court.)

Between:
Dr.S.Govardhan Naidu, s/o. S.Pullaiah, 6/1418,

Sankarapuram, Opp:Blind Boys School, Cuddapah.

..... APPELLANT

AND

1. The Government of A.P. rep. By its Principal Secretary, Higher Education, Secretariat, Hyderabad.
2. The Chairman, Executive Council, S.V. University, Tirupati, Chittoor District.
3. The Chairman, Selection Committee, S.V. University, Tirupati.
4. The Registrar, S.V. University, Tirupati, Chittoor District.

.....RESPONDENTS

Counsel for the Appellant: M/S.C.KODANDA RAM

For the Respondent No.1: GP FOR HIGHER EDUCATION

Standing Counsel for Respondent Nos.2 to 4: Mr.P.Sreeramulu Naidu.

WRIT APPEAL NO : 538 of 2003

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 23.11.2001 in WP NO : 3761 OF 2000 on the file of the High Court.)

Between:
C.Sheela Reddy, w/o.A.Jaganmohan Reddy,
Pulivendula, Cuddapah District.

..... APPELLANT

AND

Sri Venkateswara University, Tirupati, rep.by its Registrar.

.....RESPONDENT

Counsel for the Appellant: MR.K.SOMA KONDA REDDY

For the Respondent: MR.B.ADINARAYANA RAO

WRIT APPEAL NO : 817 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 23/11/2001 in WP NO : 5148 OF 2001 on the file of the High Court.)

Between:

V.Kalarani d/o.Late Sri V.Krishna Murthy
r/o.Balaji Colony,Tirupathi Chittoor District

..... APPELLANT

AND

1 Government of Andhra Pradesh
rep.by its Prl.Secretary,Higher Education Department Secretariat Buildings
Hyderabad
2 The Executive Council S.V.University
Tirupathi Chittoor District
rep.by its Chairman
3 The Chairman Selection Committee
S.V.University Tirupathi
4 The Registrar
S.V.University Tirupathi
Chittoor Diostrict

.....RESPONDENTS

For the Appellant: MR.N.BHARAT BABU

For the Respondent No.1: GP FOR HIGHER EDUCATION

For the Respondent Nos.2 to 4: Mr.P.Sreeramulu Naidu.

WRIT PETITION NO.4648 of 2004 AND WRIT APPEAL Nos.173, 248,276, 382, 383, 385, 538 of 2003 and 817 of 2002

The Court made the following:

ORAL COMMON JUDGMENT: (per GB.J.)

The Writ Petition and all the Writ Appeals can be disposed of by a common Judgment as they arise out of the Notifications issued by Sri Venkateswara University (for short University) for filling up the posts of Assistant Professors/Associate Professors.

2. The case has a long chequered history. There were number of vacancies in the cadre of Assistant Professors/Associate Professors in various disciplines in the University. Therefore, a decision was taken by the Executive Council to fill up the said posts. Accordingly the vacancies were notified and in that regard and nine advertisements were issued between the period from 8.4.1999 to 20.4.1999 calling for the applications for filling up the posts of Assistant Professors/Associate Professors in various disciplines. After the scrutiny of the applications, necessary interviews were held in September, 1999. At that point of time, since no further action was taken, Writ Petition No.3761 of 2001 came to be filed and a learned single Judge of this Court disposed of the said Writ Petition directing the University to declare the results of the Selection Committee to the posts notified. Aggrieved by the said order, the University filed Writ Appeal No.720 of 2000 and the same was allowed by a Division Bench of this Court remitting the matter back to the learned single Judge for considering the same, after hearing the University. During the course of hearing, after the matter was remitted back by a Division Bench, it was brought to the notice of this Court that the Executive Council of the University passed a Resolution on 12.1.2001 cancelling the

selections and reported the matter to the Government for approval and for further directions. Aggrieved by the said order, number of Writ Petitions came to be filed challenging the cancellation of selections and those Writ Petitions together with Writ Petition No.3761 of 2001 came to be heard by a learned single Judge. By a common order dated 23.11.2001 all the Writ Petitions were dismissed. Aggrieved by the said order, the present batch of Writ Appeals have been filed.

3. Incidentally it is noticed that Writ Petition No.4648 of 2004 has been filed seeking directions to the authorities to fill up the notified back log posts in the cadre of Assistant Professors reserved for physically handicapped category, and since the cause of action is one and the same as that of in other Writ Appeals, this Writ Petition is also called for along with these Writ Appeals and disposed of.

4. Mr.Ch.Srinivas, learned counsel for the petitioner in Writ Petition No.4648 of 2004, Mr.Jagapathi, Mr.C.Kodanda Ram, Ms.Y.Anupama Devi and Mr.K.Somakonda Reddy appeared for the appellants in the respective appeals while the learned Government Pleader for Higher Education and the learned Standing Counsel appeard for Sri Venkateswara University.

5. The learned counsel for the appellants submit that the action of the Executive Council in canceling the selections made is wholly illegal and *mala fide*. They submit that when the selections were made in accordance with the provisions contained in A.P. Universities Act, 1991 (for short the Act), the question of withholding the selections does not arise and it is only after realizing that some of the persons who were of their choice were not selected the said decision was taken to cancel the selections and therefore the cancellation of selections is illegal and *mala fide* and the same is

liable to be set aside. They further submit that the vacancies were notified for the posts which were vacant right from 1992 and when the selections were ultimately made after a prolonged exercise, cancellation of such selection is arbitrary and it violates the fundamental right of the petitioners to seek employment under the University. They also submit that the learned single Judge failed to consider the power of the judicial review under Article 226 of the Constitution of India can be exercised over the decision of the academic bodies.

6. The University has filed a detailed counter before the learned single Judge. It was explained in the counter that the vacancies were notified in all the disciplines for selections to the posts of Assistant/Associate Professors and selections were also made in accordance with the Rules. However, when the matter sought to be discussed by the Executive Council, an oral message was received from the Secretary to the Government not to proceed with the final selections. Accordingly the matter was deferred in various meetings and in one of the meetings the matter could not be discussed for want of corum. Ultimately after the deliberations in the Executive Council of the University in its meeting held on 12.1.2001 it was decided to cancel the selections with a view to extend proper representation to the reserved categories, viz., S.C., S.T., B.C., Women and Physically Handicapped, and decided to re-notify the posts after obtaining permission from the Government. At this point of time, batch of Writ Petitions came to be filed. On account of the stay granted by this Court, further process could not be undertaken. However, when the Government issued clearance on 15.1.2003 to proceed with the fresh notification and make selections for the posts, this Court again granted interim stay of all further proceedings in pursuance of the order passed by the

Government. Under those circumstances it is submitted by the learned Standing Counsel for the University that they could not proceed with the selections even though there was dire necessity for appointment of teaching staff in various subjects and disciplines. Hence he submits that appropriate directions may be issued for proceeding with the matter.

7. The question that arises for consideration in all these Writ Appeals and the Writ Petition is whether the action of the Executive Council in canceling the selections made is illegal and whether this Court can interfere under Article 226 of the Constitution of India.

8. Under the provisions contained in the Act the Executive Council is authorized to make selections and appoint the persons to various teaching posts. Under Section 19(5) of the Act it is open for the Executive Council to proceed with the selections. However, if the Executive Council is not in agreement with the selections made by the Selection Committee, it is always open for it to refer the matter to the Government, whose decision is final. Thus, taking advantage of this provision, the learned counsel for the appellants would submit that the University has not followed this procedure, and the Executive Council ought to have taken prior permission of the Government before cancellation of the selections and therefore they have violated the provisions contained in Section 19(5) of the Act.

9. Though the contention of the learned counsel for the appellants appears to be appealing, a close scrutiny of the provision would reveal that the University cannot be found fault with. Admittedly the selections have taken place for 56 posts as specified in nine advertisements covering the posts in various teaching faculties in the University. The prime question that calls for

consideration is whether this Court can interfere with the action taken by the University, under Article 226 of the Constitution of India.

10. This aspect came to be considered in a very recent Judgment of the Supreme Court in STATE OF U.P. vs. JOHRI MAL[1], wherein S.B. Sinha, J., speaking for the Bench, has traced out the power of the Court under Article 226 of the Constitution to interfere with the orders passed by the subordinate judiciary and various authorities under the statutes. After copiously referring to judgments of English Courts and the Supreme Court, it was held:

> "the scope and extent of power of judicial review of the High Court contained in Article 226 of the Constitution would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. The power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the suprema lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review, succinctly put, is:
>
> (i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of the administrative bodies.
>
> (ii) A petition for a judicial review would lie only on certain well-defined grounds.
>
> (iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is

perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a court is limited to seeing that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

(v) The courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a judge should not be invoked as a substitute for the judgment of the legislative bodies.

11. Admittedly in the instant case a decision was taken by the Executive Council, which is the highest body in the University, and the reasons assigned in the said cancellation was that in order to give adequate representation to S.C., S.T., B.C., Women and Physically Handicapped, the selections already made were cancelled. The learned counsel for the appellants, however, submit that when proper selections were made in accordance with the provisions contained in the Act, it would not be appropriate on the part of the University to cancel the same on the ground that there was no proper and adequate representation to the reserved categories and in fact adequate representation has already been notified in various advertisements from time to time making the reservations in accordance with the Act and the notifications were issued only after the approval of the State Government. In such a situation the Resolution passed by the Executive Council is nothing but only to thwart the regular selections already made in accordance with the Rules.

12. We are afraid we cannot accept the contentions raised by the learned counsel for the appellants. The highest body in the University, after detailed deliberations, came to the conclusion that proper and adequate representation was not given to the reserved categories and therefore in order to streamline the entire process, a decision was taken to cancel the selections. It has been held by the Supreme Court in a catena of decisions that even assuming that a person is put in the selection panel, he would not get any right for appointment. In such a situation, even assuming the selections were made in a proper manner and in accordance with the Rules that would not enure to the benefit of the selectees unless and until the appointment order has been issued to the persons concerned. It is always open for the authorities to cancel the same or withhold even the appointment of the selected candidates and this Court sitting under Article 226 of the Constitution cannot compel the authorities to issue appointment orders and it is for the administration to decide whether to issue appointment order or withheld the same. In the instant case the reasons were given to justify the cancellation of the selections viz., proper and adequate representation to the reserved categories was not given. Even, we find that when the Writ Petitions were filed, the matter was pending with the Government and ultimately the Government has cleared the matter on 15.1.2003 directing the authorities to proceed with the selections. In such a situation it is inappropriate to interdict the process of recruitment, which has to be undertaken afresh after giving opportunity to all the persons and also the persons who acquired qualifications after the earlier notifications were issued.

13. After going through the order of the learned single Judge, We are not inclined to interfere with the cancellation of selections already made as the decision taken by the academic bodies should

not be interfered with unless there is gross violation of the provisions or it suffers from any legal infirmity. The learned single Judge while coming to such conclusion relied on the decision of the Supreme Court reported in DALPAT ABASAHEB SOLUNKE vs. DR.B.S. MAHAJAN[2] and other decisions referred to therein.

14. Under these circumstances, keeping in view the parameters of the judicial review to be exercised under Article 226 of the Constitution by the High Court, we are of the considered view that the order of the learned single Judge cannot be found fault with and accordingly we dismiss all these Writ Appeals and also the Writ Petition No.4648 of 2004, and issue the following directions:

1) The University shall now assess the present vacancy position in all the teaching posts and issue fresh notification keeping in view the reservations made to various categories of persons within a period of six (06) weeks from today and thereafter further process shall be taken and the entire process of selections shall be completed within a period of four (04) months from the date of the issue of the notification. The reservations which are available to physically handicapped also shall be taken into consideration while notifying the vacancies.

2) The persons who had already responded to the earlier nine notifications need not submit fresh applications and they should be given opportunity to participate in the selection process afresh.

15. There shall be no order as to costs.

(G.BIKSHAPATHY, J.)

22nd June, 2004.

(B.SESHASAYANA REDDY, J.)

SSR

One Fair copy to the Hon'ble Sri Justice G.Bikshapathy (for His Lordship's kind perusal).

Copies to:

1.The Government of A.P. Rep. by its Secretary Dept. of Higher Education, Secretariat, Hyderabad.

2.The University Grants Commission Rep. by its Secretary Bhadurshah, Zaloorman New Delhi.

3.The Government of A.P. represented by its Principal Secretary, Higher Education, Secretariat, Hyderabad.

4.The Chairman, Executive Council, S.V.University, Tirupati, Chittoor District.

5.The Chairman, Selection Committee, S.V.University, Tirupati.

6.The Registrar, S.V. University, Tirupathi, Chittoor District.

7.2 CCs to G.P. for Higher Education, High Court Buildings, Hyderabad.

8.2 CD Copies.

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[1](2004) 4 SCC 714.

[2] AIR 1990 S.C. 434.